

Rec'd PCT/PTO 20 JUN 2005

REC'D 19 APR 2005

**TENT COOPERATION TREATY
PCT**

WIPO PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 709965	FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/AU2003/001715	International filing date (day/month/year) 22 December 2003	Priority date (day/month/year) 20 December 2002	
International Patent Classification (IPC) or national classification and IPC Int. Cl. ⁷ A61 M 11/00			
Applicant ACRUX DDS PTY LTD (et al.)			

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 5 sheets, including this cover sheet.

3. This report is also accompanied by ANNEXES, comprising:

a. ☒ (sent to the applicant and to the International Bureau) a total of 2 sheets, as follows:

☒ sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).

☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.

b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or table related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

☒ Box No. I Basis of the report

☐ Box No. II Priority

☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

☐ Box No. IV Lack of unity of invention

☒ Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

☒ Box No. VI Certain documents cited

☐ Box No. VII Certain defects in the international application

☐ Box No. VIII Certain observations on the international application

Date of submission of the demand 16 July 2004	Date of completion of the report 4 April 2005
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer MATTHEW FORWARD Telephone No. (02) 6283 2606

Box No. I

Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This report is based on translations from the original language into the following language which is the language of a translation furnished for the purposes of:

- ☐ international search (under Rules 12.3 and 23.1 (b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

☐ the international application as originally filed/furnished

☒ the description:

pages 1,2,4-9 as originally filed/furnished

pages* 3.3a received by this Authority on 13.10.04 with the letter of 13.10.04

pages* received by this Authority on with the letter of

☒ the claims:

pages 10-12 as originally filed/furnished

pages* as amended (together with any statement) under Article 19

pages* received by this Authority on with the letter of

pages* received by this Authority on with the letter of

☒ the drawings:

pages 1/4-4/4 as originally filed/furnished

pages* received by this Authority on with the letter of

pages* received by this Authority on with the letter of

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

☐ the description, pages

☐ the claims, Nos.

☐ the drawings, sheets/figs

☐ the sequence listing (*specify*):

☐ any table(s) related to the sequence listing (*specify*):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

☐ the description, pages

☐ the claims, Nos.

☐ the drawings, sheets/figs

☐ the sequence listing (*specify*):

☐ any table(s) related to the sequence listing (*specify*):

* If item 4 applies, some or all of those sheets may be marked "superseded."

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 1-15	YES
	Claims	NO
Inventive step (IS)	Claims 3-8,12,13	YES
	Claims 1,2,9-11,14,15	NO
Industrial applicability (IA)	Claims 1-15	YES
	Claims	NO

2. Citations and explanations (Rule 70.7)

The following documents identified in Australian Patent Office International Search Report have been considered for the purposes of this report:

D1. WO 2001085237

D2 EP 0744161

D3 EP 0864335

D4 US 3918451

D5 EP 0506293

D6 WO 1993025251

The present claims define a substance dispensing device including a body defining a chamber for receiving a substance capsule, the capsule being operable to dispense substance therefrom and having an outlet through which the substance is dispensed, the body having two relatively movable parts that are moved relatively apart from a rest position to condition the device for use, a closure member associated with one of the movable parts wherein the closure member obstructs the outlet when the movable parts are in the rest position.

NOVELTY (N) AND INVENTIVE STEP (IS):

D1 discloses substance dispensing device (10) including a body defining a chamber for receiving a substance capsule (20), the capsule being operable to dispense substance therefrom and having an outlet through which the substance is dispensed (46), the body having two relatively movable parts that are moved relatively apart from a rest position to condition the device for use (20,26) {Abstract, Fig. 1-12B, page 2 line 20 – page 17 line 17}.

This document does not disclose a closure member associated with one of the movable parts wherein the closure member obstructs the outlet when the movable parts are in the rest position. Such closure member with locking means is common general knowledge and would solve the problem of foreign matter entering the "device".

Claims 1, 2, 9-11, 14, 15 do not involve inventive step in view of this document.

D2 discloses cartridge for dispensing dental material. This document does not disclose all and every technical features of the invention. Claims 1-15 are new and involve inventive step in view of this document.

Box No. VI Certain documents cited

1. Certain published documents (Rule 70.10)

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
US 2003/0163089 A1	28 August, 2003	28 February 2002	

US 2003/0163089 A1 discloses a substance dispensing device including a body defining a chamber for receiving a substance capsule, the capsule being operable to dispense substance there from and having an outlet through which the substance is dispensed, the body having two relatively movable parts that are moved relatively apart from a rest position to condition the device for use, a closure member associated with one of the movable parts wherein the closure member obstructs the outlet when the movable parts are in the rest position {Abstract, Fig. 1029, page 1 paragraph [0002] page 11 paragraph [0137]. Claims 1-15 are not new and do not involve inventive step in view of US 2003/0163089 A1. Publication date of this document is later than priority date of Claims 1-15.

2. Non-written disclosures (Rule 70.9)

Kind of non-written disclosure

Date of non-written disclosure
(day/month/year)Date of written disclosure
referring to non-written disclosure
(day/month/year)

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of: Box V

D3 discloses a substance dispensing device including a body defining a chamber for receiving a substance capsule, the capsule being operable to dispense substance there from and having an outlet (95) through which the substance is dispensed, the body having two relatively movable parts (99,56) that are moved relatively apart from a rest position to condition the device for use {Abstract, Fig. 1-13, column 2 line 12 column 15 line 41}. This document does not disclose a closure member associated with one of the movable parts wherein the closure member obstructs the outlet when the movable parts are in the rest position. Such closure member with locking means is common general knowledge and would solve the problem of foreign matter entering the "device". Claims 1, 2, 9-11, 14, 15 do not involve inventive step in view of this document.

D4 discloses a substance dispensing device including a body defining a chamber for receiving a substance capsule (17), the capsule being operable to dispense substance there from and having an outlet (12) through which the substance is dispensed, the body having two relatively movable parts that are moved relatively apart from a rest position to condition the device for use {Abstract, Fig. 1-4, column 1 line 2 – column 3 line 34}. This document does not disclose a closure member associated with one of the movable parts wherein the closure member obstructs the outlet when the movable parts are in the rest position. Such closure member with locking means is common general knowledge and would solve the problem of foreign matter entering the "device". Claims 1, 2, 9-11, 14, 15 do not involve inventive step in view of this document.

D5 discloses an inhaler for powdered medicament. D5 discloses a cap (8) on an inhaler which is "closure member" {Abstract, Fig. 1-5, page 2 line 2 – page 7 line 19}. Claims 1,2,9-11,14,15 lack an inventive step in view of (D4) when read in the light of D5.

D6 discloses a multiple injection syringe system which is a substance dispensing device including a body defining a chamber for receiving a substance capsule, the capsule being operable to dispense substance there from and having an outlet (2) through which the substance is dispensed, the body having two relatively movable parts (44, 42) that are moved relatively apart from a rest position to condition the device for use, a closure member (4) associated with one of the movable parts wherein the closure member (34) obstructs the outlet when the movable parts are in the rest position {Abstract, Fig. 1,2, page 4 line 2 – page 16 line 13}. I read the "moving apart" as "pulling back" the syringe plunger. Claims 1,2, 9-11, 14-15 are not new and do not involve inventive step in view of D6.

BEST AVAILABLE COPY

button is operated by depression thereof along an axis, said one movable member being rotatable about the axis to switch the stop means between the enabled and a disabled condition so that when the stop means is in the enabled condition the actuator button cannot be depressed. It is further preferred that the device include locking means formed with the movable parts to prevent movement of the movable parts from the rest position. Preferably the locking means includes a detent formed with another of the two movable parts which is locatable in an opening formed in said one of the movable parts when said movable parts are in the rest position, whereby the detent must be substantially displaced from the opening to allow the movable parts to be moved from the rest position. Preferably the detent is biased towards being located in the opening. Preferably the opening is a blind cavity having a membrane located at one end of the cavity whereby in use the user depresses the membrane to displace the detent. It is preferred that the movable parts form a cover member covering the outlet when in the rest position. It is preferred that the device include a substance capsule located within the chamber, the substance capsule including pump for dispersing the substance through the outlet. It is also preferred that the device include a viewing window being provided in a side of either of the movable parts for exposing the quantity of substance left in the capsule.

It will be convenient to hereinafter describe the invention in greater detail by reference to the accompanying drawings showing a dispensing device to which the invention can be applied. The particularity of those drawings and the related description is not to be understood as superseding the generality of the definition of the invention according to the claims. The drawings show an example embodiments of aspects of the invention.

Figure 1 illustrates an isometric view of a preferred embodiment of a dispensing device with movable parts of a body in a rest position.

Figure 2 illustrates a plan view of the device from figure 1.

Figure 3 illustrates a cross sectional view of the dispensing device from figure 1.

Figure 3a illustrates an alternate detent arrangement to that shown in figure 3.

BEST AVAILABLE COPY

Figure 4 illustrates the dispensing device with the movable parts in an in use position.

Figure 5 illustrates the movable parts in isolation.

5 Figure 6 illustrates one of the movable parts and a button.

10 Figures 1 to 4 show an example device 1 to which an embodiment of each aspect of the invention has been applied. The device 1 includes a hollow body 2 that defines a chamber 3 (Figure 3) for receiving a substance capsule 4. The contents (the substance) of the capsule 4 will be selected to suit the intended use of the device 1. In the example shown, the capsule 4 includes a manually operable pump 5 for dispensing a metered quantity of the substance. Other arrangements could be adopted, such as an aerosol-type dispenser.

BEST AVAILABLE COPY